

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 47 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

and the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 47 and 55 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that the Landlord(s) acknowledged service of the Proceeding Package and are duly served in accordance with the Act.

Service of Evidence

Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.

Preliminary Matters

The Landlord, Metro Vancouver Housing Corporation, under section 2 of the Residential Tenancy Regulation, is exempt from the requirements of sections 34 (2) regarding assigning and subletting.

Issues to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

I have heard all the testimony of the parties but will refer only to what I find relevant for my decision.

The Landlord affirms the Tenant is subletting the rental unit in violation of the tenancy agreement. The Landlord provided a copy of the tenancy agreement and amendments which state that subletting is not allowed. The Tenant's girlfriend's sister is listed on the amendments as an occupant, not a tenant.

The landlord affirms they became aware that the tenant was no longer living in the rental unit when other tenants in the building contacted them asking if subletting of the rental units was allowed as the Tenant had informed them he was moving out and that his sister would be taking over the rental unit.

The Landlord provided copies of three emails, one from each of three other tenants in the building.

The first email, dated August 28, 2023 states the author had seen the Tenant move his belongings out of the rental unit over the course of a month. The author wrote that the Tenant told her that his son is much happier living at the Tenant's new place with the Tenant and his girlfriend. She further writes that the Tenant told her that his girlfriend's sister would be moving in the rental unit.

The second email, dated September 6, 2023, states that the Tenant introduced her to his girlfriend's sister in July 2023, and stated that she would be moving into the rental unit because his girlfriend's roommates had moved out and they were going to try living together in his girlfriend's home. The author wrote that at this time the Tenant was rarely seen at the rental unit. She was aware of this because the Tenant allowed her to use his backyard hose during the summer, during August they never saw any movement in the rental unit. The author wrote that at the end of August she witnessed the Tenant give keys to his girlfriend's sister and further witnessed the Tenant remove his belongings from the rental unit. She further writes that she has not seen the Tenant's car stay overnight at the rental unit for almost two months.

The third email, dated September 7, 2023, states that the Tenant told the author multiple times that he was moving out and that his girlfriend's sister, and her daughter,

would be living in the rental unit. The author wrote that he she was introduced to the girlfriend's sister by the Tenant and saw him hand over the keys to her. The Tenant stated that this had been approved by the landlord. The author further wrote that she works from home and has only rarely seen the Tenant since August 1, 2023, and when she does, the Tenant only stays at the rental unit for a few minutes before leaving. She wrote that she has not seen the Tenant stay overnight at the rental unit in months.

The Tenant and his girlfriend both affirm that these emails are the result of the landlord asking other tenants invasive questions and creating drama. The Tenant affirms he does not feel welcome or safe at the rental unit because of the hostile atmosphere he alleges the Landlord created

The Landlord conducted an inspection of the rental unit on August 25, 2023. The landlord affirms they saw no indication that the Tenant still lived in the rental unit. The affirmed that the tenant's possessions had been moved out and that they saw no belonging, clothes, or hygiene products that would belong to a male.

The landlord provided copies of four pictures taken during the inspection as follows:

- a picture of the bathroom sink with nothing in the cabinet below
- a picture of an empty closet
- a picture of the child's bedroom with no bed, some bedding folded on the floor and a toy figurine
- a picture of second closet, roughly 25% full with what appears to be female clothing.

The Tenant affirms that the pictures are not of the entire rental unit and that he has his belongings in areas of the rental unit that are not pictured.

The Tenant's ex-partner, as witness for the landlord, affirms that her and the Tenant's son was excited about moving to the Tenant's girlfriend's home. She affirms her son is with the Tenant at the new home when he has custody on Mondays, Tuesdays and every second weekend.

The Tenant affirms he and his ex-partner have a hostile relationship and she is not telling a true version of events.

The Tenant's girlfriend affirms that the Tenant stays at her home several nights a week and that they have a long term plan to transition to living together full time. Both the Tenant and his girlfriend affirm that the Tenant maintains the rental unit as his primary residence, that he is not subletting the rental unit, and that his girlfriend's sister is a roommate.

Analysis

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

I deem the One Month Notice complies with section 52 of the Act. I further deem the One Month Notice to have been served in accordance with the Act.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has provided sufficient evidence that the Tenant is no longer living at the rental unit and is subletting the rental unit in violation of the tenancy agreement.

As this is in violation of the tenancy agreement's prohibition against subletting, as allowed under section 2 of the Residential Tenancy Regulations, I dismiss, without leave to reapply, the Tenant's application to dismiss the One Month Notice.

Section 55(1) of the Act states that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the Arbitrator must grant the landlord an order of possession if the notice complies with section 52 of the Act.

Therefore, I find that the landlord is entitled to an Order of Possession effective January 31, 2024.

Is the Tenant entitled to recover the filing fee for this application from the Landlord?

As the tenant was not successful in this application, the tenant's application for authorization to recover the filing fee for this application from the landlord under section 72 of the Act is dismissed, without leave to reapply.

Is the landlord entitled to recover the filing fee for this application from the tenant?

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

Conclusion

I grant an Order of Possession to the landlord **effective January 31, 2024, after service of this Order on the tenant(s)**. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a Monetary Award in the amount of **\$100.00** under the following terms:

Monetary Issue	Granted Amount
authorization to recover the filing fee for this application from the tenant under section 72 of the Act	\$100.00
Total Amount	\$100.00

The landlord may retain part of the Tenant's security deposit as satisfaction of this Monetary Award.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 30, 2023

Residential Tenancy Branch